

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ROBERTO O.,

Claimant,

and

SOUTH CENTRAL LOS ANGELES  
REGIONAL CENTER,

Service Agency.

OAH No. 2011090686

**DECISION**

Jennifer M. Russell, Administrative Law Judge with the Office of Administrative Hearings, heard this matter in Los Angeles, California on November 15, 2011.

Victoria Baca, M.Ed., Educational Consultant, represented claimant Roberto O., who was present.<sup>1</sup> Spanish language interpreter services were provided.

Johanna Arias-Bhatia, Fair Hearings/Government Affairs Manager, represented South Central Los Angeles Regional Center (SCLARC or service agency).

Testimonial and documentary evidence was received, the case argued, and the matter submitted for decision on November 15, 2011. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

**ISSUE**

Whether the service agency may terminate claimant's Independent Living Skills training provided by Partnership for Active Learning Services, Inc.

**FACTUAL FINDINGS**

1. Claimant is a 49-year-old consumer of SCLARC based on his qualifying diagnosis of severe mental retardation. Claimant currently resides with his aunt and cousin.

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<sup>1</sup> Initials are used to preserve confidentiality.

2. Since April 11, 2005, the service agency has funded 32 hours per month of Independent Living Skills (ILS) training for claimant through Partnership for Active Learning Services, Inc. (PALS).

3. PALS's progress reports on claimant's ILS training dated July 31, 2006, December 20, 2008, July 1, 2011, and February 26, 2011 all indicate that under the category "Community Resource Awareness" claimant is "still in need of moderate assistance from ILS Educator when going out in his community," under the category "Health and Hygiene" claimant "is still in need of moderate assistance when attending medical appointments," and under the category "Money Management" claimant "continues to require assistance." (Exhibits 5, 6, 7, and 8.) All four progress reports contain the identical recommendation: "Upon assessment it is recommended that [claimant]. . . continues receiving 32 hours per month of Independent Living Skills to meet the objectives outlined in his Individual Service Plan."

4. On May 19, 2011, claimant, his service coordinator Maria Ramos, his ILS worker Sergio H, and others, attended a triennial individual program planning meeting, which was memorialized in a Comprehensive Triennial and Person-Centered Individual Program Plan (IPP). In summary, the IPP indicates that claimant "eats with at least one utensil, without spillage. He toilets without prompting, but sometimes needs assistance. Wetting or soiling occurs no more than once a month. [He] . . . performs personal care activities, but needs assistance. He needs assistance with his shaving because he cannot perform that task on his own. He can dress himself but requires assistance with fixing his collar, color coordination and weather appropriate clothing. He does not require supervision to prevent injury or harm." (Exhibit 4.)

Claimant's IPP indicates that claimant attends a day program at Behavior Education and Learning Institute (B.E.L.I.) to "develop his social skills and to learn appropriate behaviors," and that claimant "sometimes displays disruptive behaviors" at B.E.L.I. Claimant "gets easily irritated and has been disrespectful to staff and peers." Claimant will sometime scream at the program staff. According to claimant's IPP, "He has not caused injury within the past 12 months, but physical aggression occurs less than once a month. Self-injurious behaviors never occur and he has never attempted to run away from home. [Claimant] . . . does not destroy property when upset either. However, [claimant] . . . does display emotional outburst[s] that occur at least once a week, and usually requires intervention." (Exhibit 4.) Claimant takes psychotropic medications to control his behavior.

5. Maria Ramos, claimant's case manager, testified that the intended purpose of ILS training for claimant was to prepare claimant for independent living and that at the May 19, 2011 IPP meeting PALS indicated that after six years of ILS training, claimant lacks the capacity to live independently. At the hearing, Ms. Ramos recalled a discussion with claimant's program coordinator at B.E.L.I. who stated that she did not believe claimant was able to live independently because he required assistance and reminders. Ms. Ramos' discussion with the B.E.L.I. program coordinator is memorialized in a September 21, 2011

consumer transaction note. (Exhibit 11.) Ms. Ramos additionally testified that during the IPP meeting claimant stated that he wanted to continue with his ILS training.

6. Leah Chin, Ms. Ramos' manager, testified that termination of claimant's ILS training was a topic of discussion at the May 19, 2011 IPP meeting. Ms. Chin testified that after several years of ILS training claimant has not made significant progress warranting his placement in his own apartment. Ms. Chin additionally testified that claimant has a documented history of injurious behavior that can be a factor influencing the determination whether he is capable of independent living because such behavior raises safety concerns. Ms. Chin's testimony referenced a nine-year old psychological evaluation, dated July 26, 2002, which documents an incident where out of anger claimant pushed his aunt and caused her to fall and break her arm when she sought to prevent him from smoking in her home.

7. On June 24, 2011, the service agency notified claimant by letter of its proposed action to terminate his ILS training service. The notice of proposed action letter (NOPA) states in part the following:

ILS training purchased by SCLARC is a time-limited service not to exceed two years. Our records indicate that you have been receiving ILS services since **04-11-2005**, approximately six years. ILS training consists of programs that assist individuals to develop skills that will enable them to live independently. You have reported to your assigned Service Coordinator that you have no plans to reside independently within the next six months. Therefore, at this time, no need to continue ILS services has been established.

When you formulate a plan to move out and take the necessary steps to live independently such as save funds for the first and last month's rent as well as for ay deposits, you may request the ILS services be reactivated. SCLARC's recommendations are that [you] apply for In Home Supportive Services (IHSS) until you are ready to take the next step toward independent living. (Exhibit 1; Bold in original)

The NOPA cites Welfare and Institutions Code section 4659, subdivision (c) for the proposition that it is prohibited from purchasing any service that is otherwise available from IHSS and section 4646, subdivision (a), for the proposition that the provision of services and supports takes into account the needs of the individual and must reflect the cost effective use of public resources.

8. On September 12, 2011, claimant filed a Fair Hearing Request<sup>2</sup> in which he asserts that he "would like to continue with the ILS. I have not signed any documents that say that I don't want the services . . . . If I'm making progress with my ILS objectives I'm

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<sup>2</sup> The service agency raised no objection regarding the timeliness of the Fair Hearing Request.

not in agreement that my services are discontinued.” Thereafter, these proceedings ensued. The service agency continues to fund 32 hours of ILS training for claimant pending administrative resolution of the matter.

9. SCLARC has not established by a preponderance of evidence that claimant’s needs are no longer met with ILS training.

## LEGAL CONCLUSIONS

1. A party seeking a modification of an existing service or support bears the burden of proving by a preponderance of evidence that a change is warranted. (Evid. Code, § 500.)<sup>3</sup> In this case, the service agency bears that burden, which, as set forth below, it has met.

2. The procedures that a regional center must follow when terminating the services that a vendor is providing to a consumer are set forth in California Code of Regulations, title 17, section 56718, which provides:

(a) Funding of a consumer's placement in a vendor's program shall be terminated when one or more of the following occur:

(1) The regional center issues a written determination stating that continued participation jeopardized the consumer's health and safety;

(2) The consumer or authorized consumer representative makes a written or oral request to the regional center to discontinue participation or the consumer can no longer attend the program due to an unanticipated change in residence;

(3) The ID Team has determined through a consumer evaluation that the vendor's program no longer meets the consumer's needs;

(4) The vendor determines that its program may no longer meet the consumer's needs; or

(5) The consumer, or authorized consumer representative acting on behalf of the consumer, consents to an alternate placement identified by the ID Team as being able to meet the consumer's needs and as being more cost effective. The alternate placement shall be considered more cost effective if the combined cost of the alternate placement and the cost of transporting the consumer to and from the alternate placement is less than the combined cost of the

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<sup>3</sup> Evidence Code section 500 provides that “a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.”

consumer's current placement and the cost of transporting the consumer to and from the current placement.

(b) When a determination is made pursuant to (a)(1), (3), (4) or (5) above, the basis for the determination shall be documented in writing in the consumer's case file by the regional center for (a)(1) and/or (3) and/or (5) and by the vendor for (a)(4). The regional center shall also include written documentation in the consumer's file that the consumer or authorized consumer representative has been informed of the fair hearing rights pursuant to Welfare and Institutions Code, Sections 4701, 4705 and 4710 when the determination is made pursuant to (a)(1), (3) or (5) above.

(c) When the regional center or the vendor proposes to terminate the consumer's placement in the vendor's program, other than in accordance with (a)(1) or (a)(2) above, the initiating party shall notify the other party and the consumer in writing at least 30 days prior to the proposed termination date. Such notice shall include a written statement of reasons for the termination. If the regional center terminates the placement prior to the end of the 30 day notice period, except as specified in (a)(1) and (a)(2) above, the vendor shall be paid for those days of program services during that 30 days period for which the consumer would have been authorized to receive services as identified in the IPP. Funding shall not continue under either of the following circumstances:

(1) There is agreement between the regional center, vendor, and the consumer or authorized consumer representative for an earlier termination date. In this instance, funding shall be provided through the date the consumer leaves the program.

(2) The consumer's vacated place in the program has been filled by another consumer. In this instance, funding for the consumer who is no longer in the program shall cease on the date the substitute consumer begins attending.

(d) When the conditions specified in (a)(1) above exist, termination shall be immediate and no further payment shall be made, except as specified in (e) below.

(e) When the conditions specified in (a)(1), (a)(3) or (a)(5) above exist, termination of funding shall not be made if the consumer files a fair hearing request pursuant to Welfare and Institutions Code, Sections 4700 through 4730.

(f) When the conditions specified in (a)(2) above exist, funding shall terminate immediately upon the consumer's nonparticipation. The regional center shall notify the vendor in writing of the reason that the consumer no longer wishes

to participate in the program. Such notification shall be made within 10 days of the date the regional center is notified by the consumer or authorized consumer representative.

(g) A vendor may exclude a consumer from participation in the program during periods when the vendor determines that the consumer is a threat to the health and safety of other individuals in the program. Such exclusion shall be followed by a meeting scheduled by the vendor within three working days to include the consumer program coordinator, the consumer and authorized consumer representative to discuss the basis of the exclusion and any program changes that may be required. The provisions of this paragraph shall not apply to exclusions that are made in accordance with a prior written agreement with the regional center pertaining to the individual consumer.

3. The service agency claims that PALS has determined that claimant's needs are not met with ILS training. There is, however, no evidence of compliance with the regulation requiring PALS to provide written documentation stating a basis for terminating claimant's ILS training. (Cal. Code Regs., tit. 17, § 56718, subd. (b).) PALS's written documentation of any decision to terminate claimant's ILS training is particularly significant given the facts of this case where several written progress reports clearly, in contradiction of the hearing testimony, recommend a continuation of claimant's ILS training. In addition, the service agency offered no evidence of any consumer evaluation that PALS's program no longer meets claimant's needs. There is no evidence that ILS training jeopardizes claimant. Claimant did not request termination of his ILS services. Claimant did not consent to any alternate placement, including IHSS. (Cal. Code Regs., tit. 17, § 56718, subd. (a).)

Notwithstanding testimony that there is a policy limiting the amount of time for ILS training, without proper evaluation of claimant's needs, consideration of claimant's preferences and choices, and accounting of cost-effective uses of public resources through the collaborative effort contemplated by the Lanterman Developmental Disabilities Services Act,<sup>4</sup> the service agency may not terminate claimant's ILS training.

4. Cause exists to grant claimant's appeal by reason of Factual Findings 2 through 6, inclusive, and 9, and Legal Conclusions 2 and 3 in that the service agency has not met its burden of establishing by a preponderance of the evidence that claimant's ILS training should be terminated.

## ORDER

1. Claimant Roberto O.'s appeal is granted.
2. The South Central Los Angeles Regional Center may not terminate claimant Roberto O.'s independent living skills training provided by Partnership for Active Learning

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<sup>4</sup> Welf. & Inst. Code, § 4500 et seq.

Services, Inc. without first determining claimant's continuing eligibility for those services in accordance with the Lanterman Act.

Dated: December 7, 2011

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JENNIFER M. RUSSELL  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

THIS IS THE FINAL ADMINISTRATIVE DECISION. THIS DECISION BINDS BOTH PARTIES. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN 90 DAYS.